

## REMARKS/ARGUMENTS

This invention was conceived to cover a very specific application for portable music players.

Here is a brief overview of the use of the invention.

- The player unit is connected to a PC through typical means – a USB cable, for example – to download compressed music files (such as MP3 files). The invention does not involve encrypting or protecting the music files in any way.
- During installation of the transfer software on a PC, the identifier # of the player unit is transferred to the PC and stored in some non-volatile way (on the hard disk for example).
- During any subsequent music download, this identifier is attached to each downloaded music file to associate it only with that particular player unit. Note that the identifier is **not** related to the *content* of the music file – there are already industry-standard identifiers for MP3 files, for example, and there is no claim to inventing these.
- The invention does nothing to prevent the music download, or to assure a “secure” transfer. However, during the music file transfer it additionally downloads to the player unit a file containing advertising messages, and uploads from the player unit a record of previous listening activity.
- After this download/upload activity, the player unit is disconnected from the network and has no further requirement for connection until the user wishes to download new audio files.
- When the user plays the music from the player unit, the invention does three things:
  1. It checks the identifier that was appended to the music file to determine whether it matches that of the player unit. If not, the music file may have come from another source. For example, the music file could have been downloaded from someone else's PC.

2. If the music file didn't come from the player unit owner's PC, the player unit plays one of the brief (~3 sec long) advertising messages from the previously downloaded file just prior to playing the song.
  3. If the advertising message is played, the player unit takes note of the advertising message number, associates this with the industry-standard identifier that came with the downloaded music selection itself, and stores both in memory as a record of listening activity.
- Note that under normal circumstances the player unit does **not** prevent the audio file from playing back, regardless of whether an advertising message was played along with it.
  - The next time the player unit is attached to the PC for music downloads, the above-mentioned record of previous listening activity is uploaded.
  - Once uploaded to the PC, the listening activity information is sooner or later transferred back via network connection to a service that charges the advertiser for the commercial played, and pays the recording artist or company for the music heard. The user is unaware of and uninvolved in this activity. Moreover, the transfer of this information back to the service happens independently of the music download (probably in the background at a later time).

Unlike what is claimed in other patents, when the device is operating as intended, the user is **never** prevented from listening to music (even a pirated copy) and never signs up for any type of billing service or is in any way responsible for paying money for listening to the music.

I. Regarding the Berry patent as a basis for rejecting my claims:

A point of possible misunderstanding has to do with "commercial messages." I am not talking about "commercial" as in "related to commerce". I'm talking about advertisements – like ads on the radio. I believe that when re-read in this context, my claims are quite dissimilar to those of Berry.

In addition, Berry teaches about manipulating “identifiers”. But as made quite clear even in the Berry abstract, the patent offers:

“A method and system in a multimedia computer system for automatically retrieving and presenting data associated with an audio recording...”

The “identifiers” of my invention are **not** associated with the audio recording content. They serve only to indicate the ownership of the file, and have nothing to do with the file contents.

II. Regarding the Simmons patent as a basis for rejecting my claims:

This is another possible point of misunderstanding. When used correctly, my invention never attempts to prevent audio playback, nor does it provide a means of charging the user a fee for the content.

- Simmons sections [0022] and [0040] talk about using an identifier for the purposes of “the requested file being uniquely dynamically encrypted such that it can only be played back on the requesting player/receiver...”. The purpose of the identifier on my invention is to determine whether an advertising message should be played, **not** to prevent playback of the content. This was not foreseen by Simmons.
- Simmons sections [0045] and [0049] focus on “encryption” of the media file to prevent the content from being played unless all conditions are met. My invention does **not** encrypt content files, since it does not want to prevent them from being played. The word “encryption” does not appear anywhere in my claims, because there is never any attempt made to secure the music.
- Simmons section [0050] focuses on the electronic transaction control mechanism designed to ensure that users pay for content. It uses an electronic serial number as part of this process. My invention does **not** require the user to pay for content. It uses the electronic serial number of the player unit for an entirely different purpose – to determine

whether both the audio file and the player unit belong to the same user (the advertising messages are played if the numbers don't match).

For Simmons to have foreseen my invention, it would have to allow download and unrestricted playback, of any content from any source, at no cost to the user. This is exactly the opposite of what Simmons intends.

In summary:

- Berry teaches how to retrieve additional information related to the audio file content.
- Simmons teaches how to determine whether the file content is allowed to be played back so as to ensure that the consumer pays for content.
- My patent does neither of these. Instead, it teaches a way to let a content producer and an advertiser know that that advertiser's message has been played in conjunction with that producer's content, allowing the advertiser to compensate the content producer as appropriate.

My invention is using basic computer and networking concepts for an entirely different purpose than either Simmons or Berry.

Applicant : Mark R. Williams  
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### Summary of Changes to Claims

- Claim 11: Since the word "identifier" alone is getting confused with the definition used in the Berry patent, I have tried to define this identifier as NOT the one Berry refers to. The Berry patent uses "identifier" to refer to the industry-standard Redbook audio CD identifier.
- Claims 11, 13, 14, 15, and 21-24: The only Berry references to "messages" are to network messaging packets. Moreover, the Berry patent doesn't teach anything about commercial advertisements. I have added the word "advertising" to these claims to make it clear that all "messages" referenced are audible advertising messages, intended for the user to hear.
- Claims 23 and 24: I have deleted the word "removable" as it does not convey any valuable or necessary feature of the invention.

I ask that all claims be allowed in view of the amendments to the claims contained on the indicated sheets, a total of 5 pages.

Respectfully submitted,

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Mark R. Williams  
Applicant

682 S. 7<sup>th</sup> Street  
San Jose, CA 95112  
(408) 971-0958